

REMARKS

This application pertains to novel emulsifier-free finely disperse systems of the water-in-oil type, preferably as cosmetic or dermatological preparations.

Claims 1-3, 7-12, 13, 14 and 16-20 are pending, claims 4, 5 and 15 being canceled by this amendment. The limitations of claims 4, 5 and 15 have been added to claim 1.

Claims 1-5 and 7-12 stand rejected under 35 U.S.C. 103(a) as obvious over Gers-Barlag (WO 98/42300) in view of Msika (US 5,939,054) and Plaschke (US 6,409,996).

The Gers-Barlag et al. reference (WO 98/42300 or US 6,440,339) teaches broadly the use of a metal oxide and specifically towards a titanium dioxide. The present application is directed toward the use of a phyllosilicate.

In accordance with the present invention phyllosilicates and flavones/flavanoids/flavanones (referred to hereafter as "flavones") are present simultaneously. The Examiner acknowledges that both of these elements are missing in the Gers-Barlag reference, but fails to recognize that it is insufficient to find the elements separately in the prior art. To support the rejection some teaching or suggestion must be found that both elements should be present at the same time and that this combination should be applied to the teachings of the Gers-Barlag et al. reference. This, of course, cannot be found in the combination of references cited.

Msika teaches the use of a phyllosilicate with a titanium dioxide, but this neither teaches nor suggests anything at all about addition of flavones. Moreover, Msika does not recognize that phyllosilicates can be used alone to enhance stability and states that phyllosilicates must be used "judiciously" (see col. 3, line 52), which does not suggest a generic teaching for the use of phyllosilicates.

In their specification, Applicants point out that there were disadvantages to using flavones in cosmetic and dermatological compositions, in terms of stability and their incompatibility with titanium dioxide.

Although the flavones are known in the art, the references cited by the examiner (Plaschke - US 6,409,996 and Suzuki - US 5,145,781) do not teach or suggest that flavones can be used generically in any sort of composition; only that they are effective for the type of compositions contemplated by those references. The Plaschke and Suzuki references do not teach that flavones could/should be added into a water-in-oil preparation; that they would be stable in a cosmetic or dermatological water-in-oil preparation or that they would be compatible with titanium dioxide.

Moreover, these references neither teach nor suggest the simultaneous use of phyllosilicates and flavones in a water-in-oil preparation.

Accordingly, no combination of Gers-Barlag, Msika, and Plaschke could possibly lead to Applicants' novel emulsifier-free finely disperse systems of the water-in-oil type,

and the rejection of claims 1-5 and 7-12 under 35 U.S.C. 103(a) as obvious over Gers-Barlag (WO 98/42300) in view of Msika (US 5,939,054) and Plaschke (US 6,409,996) should now be withdrawn.

Claims 13-20 stand rejected under 35 U.S.C. 103(a) as obvious over Gers-Barlag, Msika and Plaschke as applied to claims 1-5 and 1-12 above, and further in view of Suzuki et al (US 5,145,781). The Examiner relies on Suzuki for alpha-glycosyl rutin. No teaching or suggestion of alpha-glycosyl rutin could ever overcome the differences pointed out above between Applicants' invention and anything that can be learned from the Gers-Barlag, Msika and Plaschke references. Claims 13-20 cannot therefore fairly be seen as obvious over Gers-Barlag, Msika and Plaschke as applied to claims 1-5 and 1-12 above, and further in view of Suzuki et al (US 5,145,781); and the rejection of said claims under 35 U.S.C. 103(a) as obvious over said references should now be withdrawn.

Claims 1-4, 8, 10 and 11 stand provisionally rejected for obviousness-type double patenting over claims 16, 17, 19, 20, 23-25 and 31 of copending application 09/640,822. It appears that said copending application will not issue to patent, and this provisional obviousness-type double patenting rejections should accordingly now be withdrawn.

In view of the present remarks it is believed that claims 1-3, 7-12, 13, 14 and 16-20 are now in condition for allowance. Reconsideration of said claims by the Examiner is respectfully requested and the allowance thereof is courteously solicited.

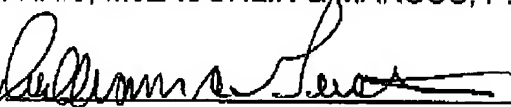
CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, Appellants request that this be considered a petition therefor. Please charge the required petition fee to Deposit Account No. 14-1263.

ADDITIONAL FEE

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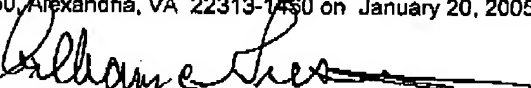
Respectfully submitted,
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I hereby certify that this correspondence is being transmitted via facsimile, no (703) 872-9308 to the United States Patent and Trademark Office, addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on January 20, 2005.

By 
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Date January 20, 2005